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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,023	02/28/2001	Philip Edwin Howse	REF/HOWSE/09	5866

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EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,023

Applicant(s)

HOWSE ET AL.

Examiner

Darren W. Ark

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16, 18-44 and 46-48 is/are allowed.
- 6) ☒ Claim(s) 17 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 17, 45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Geary 3,162,573.

Geary discloses a pesticidal composition (see Example 15; also see claims 13, 14) including particles (pellets) comprising a magnetic material (colloidal iron powder which is capable of being acted upon by a magnet) in admixture with a pesticide or behavior modifying chemical (see col. 3), or particles of a magnetic material coated with a pesticide or behavior modifying chemical (all components placed within a resin).

Allowable Subject Matter

3. Claims 1-16, 18-44, 46-48 are allowed.
4. The following is an examiner's statement of reasons for allowance:

In regard to claim 1, the prior art of record does not disclose the method of trapping insects comprising the step of coating a zone of or within the housing with a composition including particles comprising magnetic material, whereby an insect in

Art Unit: 3643

contact with the composition becomes at least partially coated with the composition and is destabilized, thereby falling into the trapping area.

In regard to claim 23, the prior art of record does not disclose an insect trap comprising a zone of the housing or a zone within the housing comprising a magnetically polarized material and the zone being coated with a composition including particles comprising a magnetic material of opposite polarity to that of the magnetically polarized material.

In regard to claim 15, the prior art of record does not disclose a pesticidal composition which comprises composite particles each comprising a core of an inert substance and the core being impregnated or coated with a magnetic material.

In regard to claim 30, the prior art of record does not disclose a method of killing or controlling insects comprising the step of coating a surface with a composition including particles comprising a magnetic material in combination with an agent selected from the group consisting of pesticides and behavior modifying chemicals and allowing the insects to contact the coated surface whereby the insects become at least partially coated with the magnetic material and thereby become exposed to the agent acting to kill or control the insects.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

5. Applicant's arguments filed 4/1/2004 have been fully considered but they are not persuasive.

In regard to applicant's argument that "This combination resembles a sieve or sponge in structure...", the Examiner contends that the resulting structure of the molecules of the Geary patent is not the issue at hand, instead the issue is whether claim 17 recites structure over the prior art device of Geary in which it is the Examiner's position that it does not. Claim 17 merely recites "A pesticidal composition...comprising" which is an open-ended recitation of the desired invention that does not particularly limit the desired invention.

In regard to applicant's argument that "In reference to example 4...", the Examiner contends that Example 4 was not relied upon to show a prior art composition that reads upon rejected claim 17.

In regard to applicant's arguments concerning "...example 15...used simply as a means of providing magnetic properties to the pellet as a whole after it has been swallowed and is not a means of anchoring particles to the external surface of an arthropod or insect...", the Examiner contends that the recitation of claim 17 is clearly met by the Geary patent and in particular example 15 since the claim merely requires that the "magnetic material in admixture with a pesticide or behavior modifying chemical" which Geary discloses in the form of the "colloidal iron powder" being mixed with Bayer L 13/59 (parasitocidal component for controlling endo- and ecto-parasites, ie. pests) and held together with a polymer which is then formed into pellets. Thus these

Art Unit: 3643

two components are in fact mixed together as claimed or coated with the chemical (coated since the Bayer L 13/59 in the polymer thus in effect coats the iron powder).

In regard to applicant's argument that "Geary...is merely provided to control the hardware disease described above...never be capable of acting as a pesticide", the Examiner contends that one of the main objects of the Geary patent is to control and/or destroy parasites and insects in animals and that the claims of the patent clearly recite methods to treat animal pests internally with the composition. Furthermore the fact that Bayer L 13/59 is disclosed as a parasiticial component as Dipterex would qualify it as an agent in destroying life.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wallach '960 discloses a method of coupling targeting molecules to lipid vesicles wherein lipophilic materials such as pheromones and organic pesticides can be encapsulated in the vesicles and that a diagnostic agent can be encapsulated therein such as magnetic particles (see claims 20 & 23).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3643

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA